

KANSAS JUVENILE JUSTICE CODE

SECTION 4

CHAPTER 38—MINORS ARTICLE 23—REVISED KANSAS JUVENILE JUSTICE CODE

38-2327. Commencement of proceedings; duties of county or district attorney. An action under this code shall be commenced by filing a verified complaint with the court and the issuance of process on the complaint. It shall be the duty of each county or district attorney to prepare and file the complaint alleging a juvenile to be a juvenile offender and to prosecute the case.

History: L. 2006, ch. 169, § 27; Jan. 1, 2007.

Source or Prior Law:

38-1612, 38-1621.

38-2328. Pleadings. (a) *Complaint.* (1) The complaint shall be in writing and shall state:

(A) The name, date of birth and residence address of the alleged juvenile offender, if known;

(B) the name and residence address of the alleged juvenile offender's parent, if known, and, if no parent can be found, the name and address of the nearest known relative;

(C) the name and residence address of any persons having custody or control of the alleged juvenile offender;

(D) plainly and concisely the essential facts constituting the offense charged and, if the statement is drawn in the language of the statute, ordinance or resolution alleged to have been violated, it shall be considered sufficient; and

(E) for each count, the official or customary citation of the statute, ordinance or resolution which is alleged to have been violated, but error in the citation or its omission shall not be grounds for dismissal of the complaint or for reversal of an adjudication if the error or omission did not prejudice the juvenile.

(2) The proceedings shall be entitled: "In the matter of _____, a juvenile."

(3) The complaint shall contain a request that parents be ordered to pay child support in the event the juvenile is removed from the home.

(4) The precise time of the commission of an offense need not be stated in the complaint, but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensable element of the offense.

(5) At the time of filing, the prosecuting attorney shall endorse upon the complaint the names of all known witnesses. The names of other witnesses that afterward become known to the prosecuting attorney may be endorsed at such times as the court prescribes by rule or otherwise.

(b) *Motions.* Motions may be made orally or in writing. The motion shall state with particularity the grounds for the motion and shall state the relief or order sought. Motions available in civil and criminal procedure are available to the parties under this code.

History: L. 2006, ch. 169, § 28; Jan. 1, 2007.

Source or Prior Law:

38-1622.

38-2329. Notice of defense of alibi or mental disease or defect. A juvenile whose defense to the allegations in the complaint is that of alibi or mental disease or defect shall give written notice to the county or district attorney and the court of such juvenile's proposed defense not less than 10 days prior to the adjudicatory hearing. For good cause shown the court may allow such notice to be given at a later time. The notice shall include the names and addresses of witnesses that the juvenile plans to call to provide evidence in support of the defense. Upon receipt of the notice of the defense of mental disease or defect, the court may order an independent examination of and report on the juvenile.

History: L. 2006, ch. 169, § 29; Jan. 1, 2007.

Source or Prior Law:

38-1623.

38-2330. Juvenile taken into custody, when; procedure; release; detention in jail. (a) A law enforcement officer may take a juvenile into custody when:

(1) Any offense has been or is being committed in the officer's view;

(2) the officer has a warrant commanding that the juvenile be taken into custody;

(3) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein;

(4) the officer has probable cause to believe that the juvenile is committing or has committed an act which, if committed by an adult, would constitute:

(A) A felony; or

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(B) a misdemeanor and: (i) The juvenile will not be apprehended or evidence of the offense will be irretrievably lost unless the juvenile is immediately taken into custody; or (ii) the juvenile may cause injury to self or others or damage to property or may be injured unless immediately taken into custody;

(5) the officer has probable cause to believe that the juvenile has violated an order for electronic monitoring as a term of probation; or

(6) the officer receives a written statement pursuant to subsection (c).

(b) A court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may take a juvenile into custody when: (1) There is a warrant commanding that the juvenile be taken into custody; (2) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein; or (3) there is probable cause to believe that the juvenile has violated a term of probation or placement.

(c) Any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may arrest a juvenile without a warrant or may request any other officer with power of arrest to arrest a juvenile without a warrant by giving the officer a written statement setting forth that the juvenile, in the judgment of the court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, has violated the condition of the juvenile's release. The written statement delivered with the juvenile by the arresting officer to the official in charge of a juvenile detention facility or other place of detention shall be sufficient warrant for the detention of the juvenile.

(d) (1) A juvenile taken into custody by a law enforcement officer shall be brought without unnecessary delay to an intake and assessment worker if an intake and assessment program exists in the jurisdiction, or before the court for proceedings in accordance with this code or, if the court is not open for the regular conduct of business, to a court services officer, a juvenile intake and assessment worker, a juvenile detention facility or youth residential facility which the court or the commissioner shall have designated. The officer shall not take the juvenile to a juvenile detention

facility unless the juvenile meets one or more of the criteria listed in subsection (b) of K.S.A. 2006 Supp. 38-2331, and amendments thereto. If the juvenile meets one or more of such criteria, the officer shall first consider whether taking the juvenile to an available nonsecure facility is more appropriate.

(2) It shall be the duty of the officer to furnish the county or district attorney and the juvenile intake and assessment worker if the officer has delivered the juvenile to the worker, with all of the information in the officer's possession pertaining to the juvenile, the juvenile's parent or other persons interested in or likely to be interested in the juvenile and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.

(e) In the absence of a court order to the contrary, the court or officials designated by the court, the county or district attorney or the law enforcement agency taking a juvenile into custody shall have the authority to direct the release prior to the time specified by subsection (a) of K.S.A. 2006 Supp. 38-2343, and amendments thereto. In addition, if an agreement is established pursuant to K.S.A. 2006 Supp. 38-2346, and amendments thereto, a juvenile intake and assessment worker shall have the authority to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and will not be dangerous to self or others.

(f) Whenever a person 18 years of age or more is taken into custody by a law enforcement officer for an alleged offense which was committed prior to the time the person reached the age of 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code, except that the provisions of this code relating to detention hearings shall not apply to that person. If detention is necessary, the person shall be detained in jail. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the court and the warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before the court of the county where the alleged act took place or, at the request of the person, the person shall be taken, without delay, before the nearest court. The court shall fix the terms and conditions of an appearance bond upon which the person may be

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released from custody. The provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901, and amendments thereto, relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

History: L. 2006, ch. 169, § 30; Jan. 1, 2007.

Source or Prior Law:
38-1624.

38-2331. Criteria for detention of juvenile in detention facility. (a) If no prior order removing a juvenile from the juvenile's home pursuant to K.S.A. 2006 Supp. 38-2334 or 38-2335, and amendments thereto, has been made, the court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis for each finding in writing.

(b) Except as provided in subsection (c), a juvenile may be placed in a juvenile detention facility pursuant to subsection (c) or (d) of K.S.A. 2006 Supp. 38-2330 or subsection (e) of K.S.A. 2006 Supp. 38-2343, and amendments thereto, if one or more of the following conditions are met:

(1) There is oral or written verification that the juvenile is a fugitive sought for an offense in another jurisdiction, that the juvenile is currently an escapee from a juvenile detention facility or that the juvenile has absconded from a placement that is court ordered or designated by the juvenile justice authority.

(2) The juvenile is alleged to have committed an offense which if committed by an adult would constitute a felony or any crime described in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(3) The juvenile has been adjudicated for a nonstatus offense and is awaiting final court action on that offense.

(4) The juvenile has a record of failure to appear in court or there is probable cause to believe that the juvenile will flee the jurisdiction of the court.

(5) The juvenile has a history of violent behavior toward others.

(6) The juvenile exhibited seriously assaultive or destructive behavior or self-destructive behavior at the time of being taken into custody.

(7) The juvenile has a record of adjudication or conviction of one or more offenses which if committed by an adult would constitute a felony.

(8) The juvenile is a juvenile offender who has been expelled from placement in a nonsecure facility as a result of the current alleged offense.

(9) The juvenile has been taken into custody by any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code pursuant to subsection (b) of K.S.A. 2006 Supp. 38-2330, and amendments thereto.

(10) The juvenile has violated probation or conditions of release.

(c) No person 18 years of age or more shall be placed in a juvenile detention center.

History: L. 2006, ch. 169, § 31; Jan. 1, 2007.

Source or Prior Law:
38-1640.

38-2332. Prohibiting placement or detention of juvenile in jail; exceptions; review of records and determination of compliance by juvenile justice authority. (a) No juvenile shall be detained or placed in any jail pursuant to the revised Kansas juvenile justice code except as provided by subsections (b), (c) and (d).

(b) Upon being taken into custody, a juvenile may be detained temporarily in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a youth residential facility or juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.

(c) The provisions of this section shall not apply to detention of a juvenile:

(1) (A) Against whom a motion has been filed requesting prosecution as an adult pursuant to subsection (a)(2) of K.S.A. 2006 Supp. 38-2347, and amendments thereto; and (B) who has received the

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benefit of a detention hearing pursuant to K.S.A. 2006 Supp. 38-2331, and amendments thereto;

(2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to K.S.A. 2006 Supp. 38-2347, and amendments thereto; or

(3) who has been convicted previously as an adult under the code of criminal procedure or the criminal laws of another state or foreign jurisdiction.

(d) The provisions of this section shall not apply to the detention of any person 18 years of age or more who is taken into custody and is being prosecuted in accordance with the provisions of the revised Kansas juvenile justice code.

(e) The Kansas juvenile justice authority or the authority's contractor shall have authority to review jail records to determine compliance with the provisions of this section.

History: L. 2006, ch. 169, § 32; Jan. 1, 2007.

Source or Prior Law:
38-1691.

38-2333. Juvenile less than 14, admission or confession from interrogation. (a) When the juvenile is less than 14 years of age, no admission or confession resulting from interrogation while in custody or under arrest may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent immediately upon the juvenile's arrival unless the parent is the alleged victim or alleged codefendant of the crime under investigation.

(b) When a parent is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no admission or confession may be admitted into evidence unless the confession or admission resulting from interrogation while in custody or under arrest was made following a consultation between the juvenile and an attorney, or a parent who is not involved in the investigation of the crime, as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent who is not

involved in the investigation of the crime immediately upon such juvenile's arrival.

(c) After an attorney has been appointed for the juvenile in the case, the parent may not waive the juvenile's rights.

History: L. 2006, ch. 169, § 33; Jan. 1, 2007.

Source or Prior Law:
38-1624(c)(3).

38-2334. Removing juvenile from custody of parent; probable cause; foster care. (a) The court shall not issue the first warrant or enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall enter its determination in the warrant or order.

(b) When a juvenile has been in foster care and has been placed at home or allowed a trial home visit for a period of six months or more and is again removed from the home, the court shall again make a determination pursuant to subsection (a).

History: L. 2006, ch. 169, § 34; Jan. 1, 2007.

38-2335. Same; custody of commissioner or SRS; reasonable efforts to maintain family unit; foster care. (a) The court shall not issue the first warrant or enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the

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juvenile. The court shall enter its determination in the warrant or order.

(3) If the juvenile is in the custody of the commissioner, the commissioner shall prepare a report for the court documenting such reasonable efforts.

(4) If the juvenile is in the custody of the secretary of social and rehabilitation services under the Kansas code for the care of children, the secretary shall prepare a report for the court documenting such reasonable efforts.

(5) In all other cases, the person preparing the predisposition report shall include documentation of such reasonable efforts in the report.

(b) If the court determines that reasonable efforts to maintain the family unit and prevent unnecessary removal of a juvenile were not made, the court shall determine whether such reasonable efforts were unnecessary because:

(1) A court of competent jurisdiction has determined that the parent has subjected the juvenile to aggravated circumstances;

(2) a court of competent jurisdiction has determined that the parent has been convicted of a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the juvenile or another child of the parent;

(3) the parental rights of the parent with respect to a sibling have been terminated involuntarily; or

(4) an emergency exists requiring protection of the juvenile and efforts to maintain the family unit and prevent unnecessary removal of the juvenile from the home were not possible.

(c) Nothing in this section shall be construed to prohibit the court from issuing a warrant or entering an order authorizing or requiring removal of the juvenile from the home if the juvenile presents a risk to public safety.

(d) When the juvenile has been in foster care and has been placed at home or allowed a trial home visit for a period of six months or more and is again removed from the home, the court shall again make a determination pursuant to subsections (a) and (b).

History: L. 2006, ch. 169, § 35; Jan. 1, 2007.

38-2336. Proceedings upon filing of complaint.

Upon the filing of a complaint under this code, the court shall proceed by one of the following methods:

(a) At any time the juvenile is not being detained, the court may issue summons with copies of the complaint attached stating the place of the hearing and time at which the juvenile is required to appear and answer the offenses charged in the complaint. The hearing shall be within 30 days of the date the complaint is filed. The summons and the complaint shall be delivered to a law enforcement agency or a person specially appointed to serve them.

(b) If the juvenile is being detained for a detention hearing as provided in K.S.A. 2006 Supp. 38-2343, and amendments thereto, at the detention hearing a copy of the complaint shall be served on the juvenile and each parent or other person with whom the juvenile has been residing who is in attendance at the hearing and a record of the service made a part of the proceedings. The court shall announce the time that the juvenile is ordered to appear again before the court for further proceedings. If no parent appears at the hearing, the court shall summon the parent or parents as provided in subsection (a).

(c) If the court is without sufficient information to accomplish service of summons, the court may issue a warrant pursuant to K.S.A. 2006 Supp. 38-2342, and amendments thereto.

History: L. 2006, ch. 169, § 36; Jan. 1, 2007.

Source or Prior Law:
38-16265.

38-2337. Summons; persons upon whom served; form.

(a) *Persons upon whom served.* The summons and a copy of the complaint shall be served on the juvenile; if the juvenile's whereabouts are known, any person having legal custody of the juvenile; the person with whom the juvenile is residing; and any other person designated by the county or district attorney.

(b) *Form.* The summons shall be issued by the clerk, dated the day it is issued, contain the name of the court, the caption of the case and be in a form that complies with the code.

History: L. 2006, ch. 169, § 37; Jan. 1, 2007.

Source or Prior Law:
38-1626.

38-2338. Service of process. (a) Summons, notice of hearing or other process may be served pursuant to K.S.A. 60-303, and amendments thereto, or as provided in subsection (b).

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(b) Service may be made by first-class mail, addressed to the individual to be served at the usual place of residence of the person with postage prepaid, and is completed upon the person appearing before the court in response thereto. If the person fails to appear when served by first-class mail, the summons, notice or other process shall be pursuant to K.S.A. 60-303, and amendments thereto.

History: L. 2006, ch. 169, § 38; Jan. 1, 2007.

Source or Prior Law:
38-1627.

38-2339. Proof of service. Proof of service shall be made as follows:

(a) *Personal or residential service.* (1) Every officer to whom summons or other process shall be delivered for service within the state shall make written report of the place, manner and date of service of the process.

(2) If the process, by order of the court, is delivered to a person other than an officer for service, the person shall report the place, manner and time of service by affidavit.

(b) *Service by mail.* The clerk or a deputy clerk shall make service by mail and shall make a written report of the service.

(c) *Amendment of report.* The judge may allow an amendment of a report of service at any time and upon the terms as are deemed just to correctly reflect the true manner of service.

History: L. 2006, ch. 169, § 39; Jan. 1, 2007.

Source or Prior Law:
38-1628.

38-2340. Service of other pleadings. *Proceedings upon filing.* Upon the filing of a subsequent pleading requesting or indicating the necessity for a hearing, the court shall fix the time and place for the hearing.

(b) *Form of notice.* The notice of hearing shall be given by the clerk, dated the day it is issued, contain the name of the court and the caption in the case.

(c) *Method and report of service.* Notice of hearing and motions or other pleadings subsequent to the complaint shall be served and report of service shall be made in the same manner as service of the complaint and summons.

History: L. 2006, ch. 169, § 40; Jan. 1, 2007.

Source or Prior law:
38-1629.

38-2341. Subpoenas and witness fees. (a) A party shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, the subpoenas and other compulsory process shall be issued and served and the disobedience thereof shall be punished in the same manner as in other civil cases.

(b) The court shall have the power to compel the attendance of witnesses from any county in the state and from out of state for proceedings under this code.

(c) Only witnesses who have been subpoenaed shall be allowed witness fees and mileage. No witness shall be entitled to be paid the fee or mileage before the witness' actual appearance at court.

History: L. 2006, ch. 169, § 41; Jan. 1, 2007.

Source or Prior Law:
38-1630.

38-2342. Issuance of warrants. The court may issue a warrant commanding the juvenile be taken into custody if there is probable cause to believe: (a) That an offense was committed and it was committed by the juvenile; (b) the juvenile violated probation, conditional release, conditions of release or placement; or (c) the juvenile has escaped from a facility. The warrant shall designate where or to whom the juvenile is to be taken if the court is not open for the regular conduct of business. The warrant shall describe the offense or violation charged in the complaint or the applicable circumstances of the juvenile's absconding or escaping.

History: L. 2006, ch. 169, § 42; Jan. 1, 2007.

Source or Prior Law:
38-1631.

38-2343. Detention hearing; waiver; notice; procedure; removal from custody of parent; audio-video communications. (a) *Length of detention.* Whenever a juvenile is taken into custody, the juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays and legal holidays, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is necessary.

(b) *Waiver of detention hearing.* The detention hearing may be waived in writing by the juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be

reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by subsection (c)(1) of K.S.A. 2006 Supp. 38-2332, and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

(d) *Oral notice.* When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.

(e) *Hearing, finding, bond.* At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours to obtain attendance of the attorney appointed. At the detention hearing, if the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto. In the absence of either finding, the court shall order the juvenile released or placed in temporary custody as provided in subsection (f).

In determining whether to place a juvenile in a juvenile detention facility pursuant to this subsection, the court shall consider all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2006 Supp. 38-2331, and amendments thereto. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(f) *Temporary custody.* If the court determines that detention is not necessary but finds that release to

the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility, some other suitable person willing to accept temporary custody or the commissioner. Such finding shall be made in accordance with K.S.A. 2006 Supp. 38-2334 and 38-2335, and amendments thereto.

(g) *Audio-video communications.* Detention hearings may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

History: L. 2006, ch. 169, § 43; Jan. 1, 2007.

Source or Prior Law:
38-1632.

38-2344. First appearance; plea. (a) When the juvenile appears without an attorney in response to a complaint, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
- (2) the right to hire an attorney of the juvenile's own choice;
- (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent; and
- (4) that the court may require the juvenile or parent to pay the expense of a court appointed attorney.

Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no request is made or the juvenile or parent is financially unable to hire an attorney, the court shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

(b) When the juvenile appears with an attorney in response to a complaint, the court shall require the juvenile to plead guilty, *nolo contendere* or not guilty to the allegations stated in the complaint, unless there is an application for and approval of an immediate intervention program. Prior to making

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this requirement, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
- (2) the right of the juvenile to be presumed innocent of each charge;
- (3) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
- (4) the right to subpoena witnesses;
- (5) the right of the juvenile to testify or to decline to testify; and
- (6) the sentencing alternatives the court may select as the result of the juvenile being adjudicated a juvenile offender.

(c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo contendere*, the court shall determine, before accepting the plea and entering a sentence: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4) and (5); and (2) that there is a factual basis for the plea.

(d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the court.

(e) First appearance may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

History: L. 2006, ch. 169, § 44; Jan. 1, 2007.

Source or Prior Law:
38-1633.

38-2345. Nolo contendere. A plea of *nolo contendere* is a formal declaration that the juvenile does not contest the charge. When a plea of *nolo contendere* is accepted the court shall adjudicate the juvenile to be a juvenile offender. The plea cannot be used against the juvenile as an admission in any other action based on the same act.

History: L. 2006, ch. 169, § 45; Jan. 1, 2007.

Source or Prior Law:
38-1634.

38-2346. Immediate intervention programs. (a) Except as provided in subsection (b), each county or district attorney may adopt a policy and establish

guidelines for an immediate intervention program by which a juvenile may avoid prosecution. In addition to the county or district attorney adopting policies and guidelines for the immediate intervention programs, the court, the county or district attorney and the director of the intake and assessment center, pursuant to a written agreement, may develop local programs to:

(1) Provide for the direct referral of cases by the county or district attorney or the intake and assessment worker, or both, to youth courts, restorative justice centers, hearing officers or other local programs as sanctioned by the court.

(2) Allow intake and assessment workers to issue a summons, as defined in subsection (e) or if the county or district attorney has adopted appropriate policies and guidelines, allow law enforcement officers to issue such a summons.

(3) Allow the intake and assessment centers to directly purchase services for the juvenile and the juvenile's family.

(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and is not dangerous to self or others.

(b) An immediate intervention program shall provide that an alleged juvenile offender is ineligible for such program if the juvenile faces pending charges as a juvenile offender, for committing acts which, if committed by an adult, would constitute:

(1) A violation of K.S.A. 8-1567, and amendments thereto, and the juvenile: (A) Has previously participated in an immediate intervention program instead of prosecution of a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been adjudicated of a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.

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(c) An immediate intervention program may include a stipulation, agreed to by the juvenile, the juvenile's attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the juvenile fails to fulfill the terms of the specific immediate intervention agreement and the immediate intervention proceedings are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts.

(d) The county or district attorney may require the parent of a juvenile to be a part of the immediate intervention program.

(e) "Summons" means a written order issued by an intake and assessment worker or a law enforcement officer directing that a juvenile appear before a designated court at a stated time and place to answer a pending charge.

(f) The provisions of this section shall not be applicable in judicial districts that adopt district court rules pursuant to K.S.A. 20-342, and amendments thereto, for the administration of immediate intervention programs by the district court.

History: L. 2006, ch. 169, § 46; Jan. 1, 2007.

Source or Prior Law:
38-1635.

38-2347. Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization. (a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2006 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile unless good cause is shown to prosecute the juvenile as an adult.

(2) The alleged juvenile offender shall be presumed to be an adult if the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint, if any such offense: (i) If committed by an adult, would constitute an off-grid crime, a person felony, a nondrug severity level 1 through 6

felony or any drug severity level 1, 2 or 3 felony; or (ii) was committed while in possession of a firearm; or (B) charged with a felony or with more than one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an offense which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new act charged and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2006 Supp. 38-2356, and amendments thereto. If the juvenile is presumed to be an adult, the burden is on the juvenile to rebut the presumption by a preponderance of the evidence.

(3) At any time after commencement of proceedings under this code against a juvenile offender and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2006 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

(4) If the county or district attorney or the county or district attorney's designee files a motion to designate the proceedings as an extended jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint and: (A) charged with an offense: (i) If committed by an adult, would constitute an off-grid crime, a person felony, a nondrug severity level 1 through 6 felony or any drug severity level 1, 2 or 3 felony; or (ii) was committed while in possession of a firearm; or (B) charged with a felony or with more than, one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an act which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new offense charged, the burden is on the juvenile to rebut the designation of an extended jurisdiction juvenile prosecution by a preponderance of the evidence. In all other motions requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution, the juvenile is presumed to be a juvenile. The burden of proof is on

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the prosecutor to prove the juvenile should be designated as an extended jurisdiction juvenile.

(b) The motion also may contain a statement that the prosecuting attorney will introduce evidence of the offenses alleged in the complaint and request that, on hearing the motion and authorizing prosecution as an adult or designating the proceedings as an extended jurisdiction juvenile prosecution under this code, the court may make the findings required in a preliminary examination provided for in K.S.A. 22-2902, and amendments thereto, and the finding that there is no necessity for further preliminary examination.

(c) (1) Upon receiving the motion, the court shall set a time and place for hearing. The court shall give notice of the hearing to the juvenile, each parent, if service is possible, and the attorney representing the juvenile. The motion shall be heard and determined prior to any further proceedings on the complaint.

(2) At the hearing, the court shall inform the juvenile of the following:

- (A) The nature of the charges in the complaint;
- (B) the right of the juvenile to be presumed innocent of each charge;
- (C) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
- (D) the right to subpoena witnesses;
- (E) the right of the juvenile to testify or to decline to testify; and
- (F) the sentencing alternatives the court may select as the result of the juvenile being prosecuted under an extended jurisdiction juvenile prosecution.

(d) If the juvenile fails to appear for hearing on the motion after having been served with notice of the hearing, the court may hear and determine the motion in the absence of the juvenile. If the court is unable to obtain service of process and give notice of the hearing, the court may hear and determine the motion in the absence of the alleged juvenile offender after having given notice of the hearing at least once a week for two consecutive weeks in the official county newspaper of the county where the hearing will be held.

(e) In determining whether or not prosecution as an adult should be authorized or designating the proceeding as an extended jurisdiction juvenile prosecution, the court shall consider each of the following factors:

(1) The seriousness of the alleged offense and whether the protection of the community requires

prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;

(4) the number of alleged offenses unadjudicated and pending against the juvenile;

(5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;

(7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and

(8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.

The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of K.S.A. 2006 Supp. 38-2354, and amendments thereto, written reports and other materials relating to the juvenile's mental, physical, educational and social history may be considered by the court.

(f) (1) The court may authorize prosecution as an adult upon completion of the hearing if the court finds from a preponderance of the evidence that the alleged juvenile offender should be prosecuted as an adult for the offense charged. In that case, the court shall direct the alleged juvenile offender be prosecuted under the applicable criminal statute and that the proceedings filed under this code be dismissed.

(2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution upon completion of the hearing if the juvenile has failed to

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rebut the presumption or the court finds from a preponderance of the evidence that the juvenile should be prosecuted under an extended jurisdiction juvenile prosecution.

(3) After a proceeding in which prosecution as an adult is requested pursuant to subsection (a)(2), and prosecution as an adult is not authorized, the court may designate the proceedings to be an extended jurisdiction juvenile prosecution.

(4) A juvenile who is the subject of an extended jurisdiction juvenile prosecution shall have the right to a trial by jury, to the effective assistance of counsel and to all other rights of a defendant pursuant to the Kansas code of criminal procedure. Each court shall adopt local rules to establish the basic procedures for extended jurisdiction juvenile prosecution in such court's jurisdiction.

(g) If the juvenile is present in court and the court also finds from the evidence that it appears a felony has been committed and that there is probable cause to believe the felony has been committed by the juvenile, the court may direct that there is no necessity for further preliminary examination on the charges as provided for in K.S.A. 22-2902, and amendments thereto. In that case, the court shall order the juvenile bound over to the district judge having jurisdiction to try the case.

(h) If the juvenile is convicted, the authorization for prosecution as an adult shall attach and apply to any future prosecutions of the juvenile which are or would be cognizable under this code. If the juvenile is not convicted, the authorization for prosecution as an adult shall not attach and shall not apply to future prosecutions of the juvenile which are or would be cognizable under this code.

(i) If the juvenile is prosecuted as an adult under subsection (a)(2) and is not convicted in adult court of an offense listed in subsection (a)(2) but is convicted or adjudicated of a lesser included offense, the juvenile shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2006 Supp. 38-2361, and amendments thereto.

History: L. 2006, ch. 169, § 47; Jan. 1, 2007.

Source or Prior Law:
38-1636.

38-2348. Proceedings to determine competency.

(a) For the purpose of this section, a person charged as a juvenile is incompetent for adjudication as a juvenile offender if, because of mental illness or defect, such person is unable to:

(1) Understand the nature and purpose of the proceedings; or

(2) make or assist in making a defense.

Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this code, such words shall refer to the standard for incompetency described in this subsection.

(b) (1) If at any time after such person has been charged as a juvenile there is reason to believe that the juvenile is incompetent for adjudication as a juvenile offender, the proceedings shall be suspended and the court before whom the case is pending shall conduct a hearing to determine the competency of the juvenile. Such a hearing may be held upon the motion of the juvenile's attorney or the prosecuting attorney, or upon the court's own motion.

(2) The court shall determine the issue of competency. To facilitate in this determination, the court may: (A) Appoint a licensed psychiatrist or psychologist to examine the juvenile; or (B) designate a private or public mental health facility to conduct a psychiatric or psychological examination and report to the court. If the examining psychiatrist, psychologist or private or public mental health facility determines that further examination is necessary, the court may commit the juvenile for not more than 60 days to any appropriate public or private institution for examination and report to the court. For good cause shown, the commitment may be extended for another 60 days. No statement made by the juvenile in the course of any examination provided for by this section, whether the examination is with or without the consent of the juvenile, shall be admitted in evidence against the juvenile in any hearing.

(3) Unless the court finds the attendance of the juvenile would be injurious to the juvenile's health, the juvenile shall be present personally at all proceedings under this section.

(c) If the juvenile is found to be competent, the proceedings which have been suspended shall be resumed.

(d) If the juvenile is found to be incompetent, the juvenile shall remain subject to the jurisdiction of the court and shall be committed for evaluation and treatment pursuant to K.S.A. 2006 Supp. 38-2349 and 38-2350, and amendments thereto. One or both parents of the juvenile may be ordered to pay child support pursuant to the Kansas child support

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guidelines. Upon application of the juvenile and in the discretion of the court, the juvenile may be released to any appropriate private institution upon terms and conditions prescribed by the court.

(e) If at any time after proceedings have been suspended under this section, there are reasonable grounds to believe that a juvenile who has been adjudged incompetent is now competent, the court in which the case is pending shall conduct a hearing to determine the juvenile's present mental condition. Reasonable notice of the hearings shall be given to the prosecuting attorney, the juvenile and the juvenile's attorney of record, if any. If the court, following the hearing, finds the juvenile to be competent, the pending proceedings shall be resumed.

History: L. 2006, ch. 169, § 48; Jan. 1, 2007.

Source or Prior Law:
38-1637.

38-2349. Same; commitment of incompetent.

(a) A juvenile who is found to be incompetent pursuant to K.S.A. 2006 Supp. 38-2348, and amendments thereto, shall be committed for evaluation and treatment to any appropriate public or private institution for a period not to exceed 90 days. Within 90 days of the juvenile's commitment to the institution, the chief medical officer of the institution shall certify to the court whether the juvenile has a substantial probability of attaining competency for hearing in the foreseeable future.

(b) If the chief medical officer of the institution certifies that a probability of attaining competency does exist, the court shall order the juvenile to remain in an appropriate public or private institution until the juvenile attains competency or for a period of six months from the date of the original commitment, whichever occurs first. If the juvenile does not attain competency within six months from the date of the original commitment, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. If the juvenile appears to have attained competency, the institution shall promptly notify the court in which the case is pending. Upon notice the court shall hold a hearing to determine competency pursuant to subsection (e) of K.S.A. 2006 Supp. 38-2348, and amendments thereto.

(c) If the chief medical officer of the institution certifies that a probability of attaining competency

does not exist, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 49; Jan. 1, 2007.

Source or Prior Law:
38-1638.

38-2350. Same; juvenile not mentally ill person.

(a) If, after proceedings as required by K.S.A. 2006 Supp. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 2006 Supp. 38-2348, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 2006 Supp. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 2006 Supp. 38-2348, and amendments thereto, that the proceedings shall be resumed, within five days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from commitment and shall dismiss the charges without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 2006 Supp. 38-2348, and amendments thereto.

History: L. 2006, ch. 169, § 50; Jan. 1, 2007.

Source or Prior Law:
38-1639.

38-2351. Duty of parents and others to appear at all proceedings involving alleged juvenile offender; failure, contempt. (a) Any parent or person with whom a juvenile resides who is served with a summons as provided in K.S.A. 2006 Supp. 38-2337, and amendments thereto, shall appear with the juvenile at all proceedings concerning the juvenile, unless excused by the court having jurisdiction of the matter.

(b) Any person required by this code to be present at all juvenile proceedings who fails to comply, without good cause, with the provisions of subsection (a) may be proceeded against for indirect contempt of court pursuant to the provisions of K.S.A. 20-1204a et seq., and amendments thereto.

(c) As used in this section, “good cause” for failing to appear includes, but is not limited to, a situation where a parent:

(1) Does not have physical custody of the juvenile and resides outside of Kansas;

(2) has physical custody of the juvenile, but resides outside of Kansas and appearing in court will result in undue hardship to such parent; or

(3) resides in Kansas, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent.

(d) If the parent of any juvenile cannot be found or fails to appear, the court may proceed with the case without the presence of such parent.

History: L. 2006, ch. 169, § 51; Jan. 1, 2007.

Source or Prior Law:

38-1641.